DISTRICT OF COLUMBIA
COURT OF APPEALS

District of Columbia
Court of Appeals

FILED FEB 28 1974
Alexander L. Stevas
Clerk

RECEIVED MAR - 1 1974

No. 7129 JANUARY TERM, 1974

THOMAS J. McRAE, Appellant,

v. 60660-72-B-C

UNITED STATES, Appellee.

Appeal from the Superior Court of the District of Columbia, Criminal Division.

BEFORE: Kelly, Fickling and Fair, Associate Judges.

J U D G M E N T

Appellant was convicted by a jury of simple assault (D.C. Code 1973, § 22-504) and of carrying a pistol without a license (D.C. Code 1973, § 22-3204). It is urged on appeal that a series of prosecutorial errors amounted to misconduct so prejudicial as to require a new trial. Specifically, appellant claims that the prosecutor (1) instructed the witnesses not to speak with defense counsel; (2) made improper and unfounded suggestions that the defense was tampering with the witnesses; (3) asked speculative questions for purposes of innuendo rather than to elicit a response; (4) indulged in improper questions to appellant by use of a double question and irrelevant matters; (5) improperly attempted to probe the attorney-client relationship, and (6) made an improper closing argument by incorrectly recounting the testimony and by injecting therein his personal opinion. The numerous mistrial motions made by counsel were denied, as well as a subsequent motion for new trial.

After careful review of the record and briefs, and after hearing oral argument, the court is of the opinion that appellant's alleged errors do not rise to the level of substantial prejudice necessitating reversal. Smith v. United States, D.C.App., ____ A.2d ____ (No. 7184, Feb. 21, 1974).

As to the first claim of error, while the circumstances as evidenced on the record were somewhat equivocal, the trial court admonished the prosecutor for his conduct and, unlike the situation in Gregory v.

United States, 125 U.S.App.D.C. 140, 369 F.2d 185 (1966), ordered that counsel have full access to prosecution witnesses. Thus, the grant of a mistrial was not required. The second, third, fourth and fifth claims of error are insubstantial. In each instance counsel's objection was sustained and on several occasions either a clarifying instruction was given or the jury was instructed to disregard the questions to which objections had been made. In no instance was a mistrial warranted. As to the final claim of error, the trial court did at one point reprimand the prosecutor for making an improper argument; however, the prosecutor's remarks, if improper, were not so prejudicial as to warrant reversal. Harris v. United States, 131 U.S.App.D.C. 105, 402 F.2d 656 (1968). In addition, it is the court's judgment that, just as each of the claimed errors did not separately require a mistrial, the combined effect of the alleged errors did not establish a pattern of prosecutorial misconduct which could be said to have denied appellant a fair trial.

Accordingly, it is this 28th day of February, 1974,

ORDERED and ADJUDGED that the judgment of the trial court is hereby affirmed.

PER CURIAM.

FOR THE COURT:

Alexander L. Stevas

ALEXANDER L. STEVAS, CLERK.

Copies to:

Honorable Luke C. Moore
Judge, Superior Court of the District of Columbia.

Clerk, Superior Court of the District of Columbia.

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